

effect of denying access to OSS by BOC joint marketing personnel.¹⁰⁷ We conclude that GTE has not raised any argument that would persuade us to modify the application of the OSS access requirements in the case of GTE. Access to OSS is as important to ESPs in GTE's service areas as it is in the BOCs' service areas. Moreover, with the clarification of the OSS requirements made in the BOC ONA Amendment Reconsideration Order, the OSS requirements would not appear to impose major burdens on GTE.¹⁰⁸ Accordingly, we require that GTE describe how it will comply with the OSS requirements in its ONA plan and that GTE comply with all of the OSS requirements within fifteen months from the release of this Order.¹⁰⁹

3. Network Information Disclosure Rules

50. Background. The Network Information Disclosure rules ensure that independent ESPs receive timely access to technical information related to new or modified network services affecting the interconnection of enhanced services to the BOC networks. Under these rules, a BOC must disclose the relevant network information (1) to an ESP at the "make/buy point," subject to the ESP's execution of a nondisclosure agreement, and (2) to the public between from six and twelve months before introduction of the new or modified network service.¹¹⁰

51. Positions of the Parties. GTE argues that the Commission's rules should not apply to it because GTE does not engage in "make/buy" decisions, and it informs all customers of the introduction of new network capabilities.¹¹¹ GTE contends that because it must interconnect with other independents, IXC's, and ESPs, it has a strong incentive to comply with uniform industry standards. In this regard, GTE notes that it deploys only new services and network interface changes that conform to Bellcore requirements. GTE also contends that because it plays such a limited role in designing new

¹⁰⁷ BOC ONA Amendment Reconsideration Order, 8 FCC Rcd 97 (1993).

¹⁰⁸ GTE's original estimates of \$16 million to implement the OSS requirements do not reflect the clarifications in the BOC ONA Amendment Reconsideration Order.

¹⁰⁹ See supra para. 26. We do not require that GTE detail its OSS requirements in the ONA plan as long as GTE's requirements follow specific procedures approved for the BOCs and is consistent with our requirements. GTE must state in its plan when it is complying with OSS requirements in a specific manner already approved for the BOCs.

¹¹⁰ Phase II Order, 2 FCC Rcd at 3087-88, paras. 107-12; see Phase I Order, 104 FCC 2d at 1080-86, paras. 246-55.

¹¹¹ GTE Comments at 14-15 and Attachment G.

network services, it is limited in its ability to discriminate in favor of its own enhanced services operation in this area and in making technical network changes.¹¹² In addition, GTE notes that it is already subject to the All Carrier Rule¹¹³ and GTE Consent Decree,¹¹⁴ and argues that existing safeguards are sufficient in light of GTE's role as a purchaser rather than a developer of network products to preclude any discrimination. GTE contends that it has an active program to identify ESPs and develop and implement services responsive to their needs. In fact, GTE states it has many offerings comparable to those proposed by the BOCs and approved by the Commission.¹¹⁵

52. Hawaii and MCI oppose GTE's argument that it should not be subject to the make/buy aspect of the network disclosure requirements. Hawaii states that although GTE no longer has an exclusive manufacturing affiliate, GTE remains involved in a joint switch-manufacturing operation with AT&T. Hawaii also states that many GTE operating companies use equipment originally manufactured by GTE's Automatic Electric.¹¹⁶

53. Discussion. We agree with MCI and Hawaii that the ONA network disclosure rules should apply to GTE's provision of enhanced services. The All Carrier Rule does not provide the same level of protection from discrimination as the ONA network disclosure rules. We do not find GTE's argument that it has a limited role in equipment design to be a reason to treat GTE differently than the BOCs since the BOCs are prohibited under the MFJ from manufacturing network equipment while GTE is under no similar limitation. The disclosure of new interfaces, new network services, and other changes to the network in a timely fashion, as required by the network disclosure rules, is important to ESPs in a competitive environment. Accordingly, GTE must describe in its ONA plan how it intends to comply with the network disclosure rules and it must comply with these rules effective fifteen months from the release of this Order.¹¹⁷

¹¹² GTE Comments at 64.

¹¹³ See 47 C.F.R. Section 68.110.

¹¹⁴ U.S. v. GTE Corp., 1985-1 Trade Cas. (CCH) para. 66,355, section IV (Jan. 29, 1985) (GTE Consent Decree); see U.S. v. GTE Corp., 603 F. Supp. 730, 742 (D.D.C. 1984) (order authorizing the GTE Consent Decree).

¹¹⁵ GTE Comments at 65-9.

¹¹⁶ Hawaii Comments at 7; MCI Comments at 7-8.

¹¹⁷ See supra para. 26. We do not require that GTE detail its network disclosure requirements in the ONA plan as long as GTE's requirements follow specific procedures approved for the BOCs and are consistent with our requirements. GTE must state in its plan when it is complying with network disclosure requirements in a specific manner already approved for the BOCs.

4. Nondiscrimination in Installation and Maintenance

54. Background. The nondiscrimination reporting requirements protect against possible discrimination against ESPs by the BOCs in the quality, installation, and maintenance of basic services. These requirements compare the quality of basic service provided to the BOC's own enhanced services with that of basic services provided to the BOC's ESP competitors.

55. Under our nondiscrimination reporting requirements, each BOC must: (1) demonstrate that its procedures and systems for providing services preclude discrimination in installation and maintenance, and quality of ONA services; (2) file annual affidavits attesting that it has not discriminated in the quality of installation and maintenance of ONA services provided to its ESP competitors; and (3) file quarterly reports comparing the timeliness of its installation and maintenance of basic services for its own enhanced services operations with that for all customers.¹¹⁸

56. Positions of the Parties. GTE argues that before we consider imposing such heavy reporting costs on GTE, we should inquire into the following: (1) whether existing reports could be useful for GTE customers; (2) how the information will be used; (3) why reports would be preferable or superior to other preexisting sources for the same information; and (4) whether there are any modifications that would make such reports useful to GTE customers. GTE contends that an inquiry into these issues would establish that the benefits of GTE reporting do not justify the cost.¹¹⁹ GTE further contends that its existing installation and repair methods preclude discrimination, and that the cost and manpower associated with these ongoing reporting requirements is greater for GTE than for the BOCs. Finally, GTE contends that the reports would contain information about predominately rural service areas thereby providing little, if any, benefits to ESPs.¹²⁰

57. Hawaii argues that without nondiscrimination reporting, it is virtually impossible to know whether or not discrimination has occurred. Hawaii further argues that because GTE's processes already create a "paper trail," filing nondiscrimination information with the Commission will not impose any significant burden on GTE.¹²¹

¹¹⁸ See Phase I Order, 104 FCC 2d at 1055-56, para. 192, 1066, para. 218; Phase II Reconsideration Order, 3 FCC Rcd at 1160, paras. 76-77; BOC ONA Order, 4 FCC Rcd at 235, para. 451, 248-49, para. 481.

¹¹⁹ GTE Comments at 63.

¹²⁰ Id. at 60.

¹²¹ Hawaii Comments at 9.

58. Discussion. We conclude that GTE has not demonstrated with any specificity why it should be subject to nondiscrimination reporting requirements substantially different from those imposed on the BOCs. We find that these reports, in particular, provide a useful check on possible discrimination, and note that the information included in these reports is not available from other sources. While more of GTE's local exchanges have relatively few access lines when compared to the BOCs, some of the BOCs also have a large number of small exchanges. We nonetheless concluded that the benefits of those nondiscrimination reporting safeguards for the BOCs outweighed the disadvantages. We reach the same conclusion here and decline to apply a reduced or modified set of reporting requirements to GTE.

59. Thus, we require GTE to comply with the nondiscrimination reporting requirements applicable to the BOCs. In particular, GTE must file an annual affidavit stating that it does not discriminate in providing ONA services to competitive ESPs and their customers, including the installation, maintenance, and quality of such services. The annual affidavit must be signed by the officer principally responsible for ONA service quality, installation, and maintenance. We also require that GTE file quarterly installation and maintenance reports using the reporting categories adopted for BOC reports unless GTE proposes and we approve a different format for its quarterly report in its ONA plan.¹²² GTE's initial installation and maintenance report is to cover the first full calendar quarter following the implementation date for ONA requirements and nondiscrimination safeguards. Thereafter, GTE must file these reports quarterly.¹²³

IV. Implementation

60. Background. In the Notice, we proposed to streamline implementation of GTE's initial ONA offerings by foregoing the sequential ONA process used for the BOCs, instead requiring GTE to file its ONA tariffs at or about the same time that it files its proposed initial offering of ONA services. We solicited comment on two alternatives for the timing of review of GTE's proposed initial offerings of ONA services and its ONA tariffs. The first alternative proposed that GTE submit its ONA tariffs and its justification of its initial ONA services at the same time. Under the second alternative,

¹²² This format should be consistent with the installation and maintenance system reports required of the BOCs and described in BOC ONA Reconsideration Order at Appendix B. GTE may, however, attempt to justify different service categories at a comparable level of detail. We delegate authority to the Chief, Common Carrier Bureau to review and to act on any requested changes to the reporting categories.

¹²³ The report for each calendar quarter is due thirty days after the close of that calendar quarter.

GTE would submit the justification for its initial ONA offerings sixty days before filing its ONA tariffs.

61. Positions of the Parties. GTE argues that by filing an ONA plan prior to filing the tariffs, it will be able to minimize the costs of developing the tariffs.¹²⁴ GTE, ITN, and MCI also support requiring GTE to file an ONA plan in advance of its tariffs. Only one party, GSA, supports a simultaneous filing.

62. GTE, however, states that it is not confident that all the BOC requirements could be implemented within twelve months as proposed in the Notice. GTE states that because some changes are likely to require more than a year to implement, it might need to request limited waivers for some requirements. GTE adds that any subsequent changes to these requirements should include specific and reasonable timeframes for compliance considering GTE's unique implementation circumstances.¹²⁵

63. Discussion. The experience gained from our lengthy review of the BOCs' initial ONA plans and tariffs, as well as from the implementation of approved BOC ONA service offerings, enables us to streamline our review of GTE's initial ONA service offerings. The BOC experience provides substantial guidance to GTE concerning our standards for evaluating the adequacy of such offerings and has developed further expertise within the Commission on these matters.

64. We conclude that GTE must implement all ONA requirements and nondiscrimination safeguards fifteen months after release of this Report and Order unless another time period is specified in this Order. These requirements include those that have been developed in the Computer III and Computer III remand proceedings and the BOC ONA Orders, as well as any future requirements that the Commission may establish for the BOCs, unless GTE is specifically exempted.¹²⁶ Further, GTE shall submit an ONA plan within nine months of the release of this Order and shall file state and federal ONA tariffs for its ONA services within one year of the release of this Order. These tariffs will be subject to the requirements established in the ONA proceeding and the federal tariffs will also be subject to the pricing and other requirements of CC Docket 89-79, relating to the

¹²⁴ GTE Comments at 76.

¹²⁵ Id. at 77.

¹²⁶ GTE must amend its initial federal ONA tariff to include any requirements that are adopted so close to the GTE tariff filing date that they cannot be reflected in the initial tariff filing as soon as possible during the three month public notice period.

creation of access charge subelements and cost support requirements for ONA.¹²⁷

V. Preemption

65. Background/Notice. In the BOC Safeguards Order, we preempted state requirements for structural separation of facilities and personnel used to provide the intrastate portion of jurisdictionally mixed enhanced services. We also preempted state CPNI rules that require prior authorization that is not required by federal rules and state network information disclosure rules that require initial disclosure at a time different from what is required by the federal rule. We did not preempt other state safeguards, but stated that we would review them, if necessary, on a case-by-case basis.¹²⁸ We also stated that our preemption of state structural separation requirements and state CPNI rules covered state requirements applicable to AT&T, the BOCs, and independent telephone companies. Those preemptions are in full effect and prohibit states from requiring structural separation or imposing a prior CPNI authorization requirement for GTE's provision of enhanced services. We stated in the BOC Safeguards Order, however, that we would not preempt state network information disclosure rules applicable to carriers, such as GTE, that are not subject to the federal network information disclosure rule.

66. In the Notice, because we proposed to subject GTE to the federal network information disclosure rule, we also proposed to preempt state network information disclosure rules applicable to GTE that require initial disclosure at a time different from the timing specified in the federal rule.¹²⁹ In that order, we stated that our

¹²⁷ In addition, if GTE uses a computer model relying, in whole or in part, on proprietary data to develop its rates, it bears a substantial, initial burden of demonstrating circumstances that preclude reliance on publicly available data. GTE must also show that this model produces reasonably accurate results. See Part 69/ONA Report and Order and Order on Further Reconsideration and Supplemental Notice, 6 FCC Rcd 4524 (1991), Part 69/ONA Memorandum Opinion and Order on Second Further Reconsideration, 7 FCC Rcd 5235 (1992), Part 69/ONA Report and Order (Future Pricing), 8 FCC Rcd 2104 (1993), Part 69/ONA Recon., 8 FCC Rcd 3114 (1993), Open Network Architecture Tariffs of Bell Operating Companies Report and Order, 9 FCC Rcd 440 (1994). While we believe that the schedule we have established for GTE's implementation of ONA is reasonable in light of the experience we have gained in the course of BOC implementation, we will entertain requests for a waiver or extension of this schedule in appropriate circumstances.

¹²⁸ BOC Safeguards Order, 6 FCC Rcd at 7630-31.

¹²⁹ There was no need to propose to preempt state structural separation requirements and state CPNI rules that require prior authorization not required by federal rules since we had already preempted such requirements in the case of GTE in the BOC Safeguards

network information disclosure rule seeks to strike a balance between assuring that independent ESPs receive network information on a timely basis and preventing premature disclosure that could impair carriers' service development efforts and inhibit network innovation. We also found that a state rule that required initial disclosure at a time different from the federal rule would negate the federal rule on the timing for initial disclosure of network information because, by definition, initial disclosure can occur only once. We solicited comments on our proposal. We also solicited comment on what, if any, different preemption of state requirements would be warranted if we decided to adopt modified ONA requirements and nondiscrimination safeguards.

67. Positions of the Parties. NYDPS, the only party to comment on this issue, continues to oppose the preemption of state requirements regarding the provision of enhanced services. NYDPS argues that since none of the parties in this proceeding have proposed that the states be denied the ability to regulate GTE's provision of enhanced services, there is no basis to conclude that state policies would make it impossible for the Commission to effectuate its goals absent preemption.¹³⁰ NYDPS disagrees with the proposal to preempt additional state requirements for GTE.

68. Discussion. We adopt the same preemption of state network disclosure requirements for GTE that we established for the BOCs in the BOC Safeguards Order. We have previously carefully balanced the timing of the federal network disclosure rules applicable to the BOCs, and concluded that inconsistent state rules would disturb that balance. We do not believe that the GTE network disclosure requirements should differ from those we have applied to the BOCs, and we have previously found it necessary in the case of the BOCs to adopt rules that preempt state requirements which require initial disclosure at a point different from that specified by the Commission. Without preemption, any inconsistent state rule would negate the federal rule. Accordingly, we preempt state requirements that would require GTE to make an initial disclosure at a time different from that specified in the federal rule.¹³¹ Since we require GTE to comply with the same ONA requirements and nondiscrimination safeguards we have previously applied to the BOCs, we do not find that any other modification to the preemption of state requirements adopted in the BOC Safeguards Order is warranted.¹³²

Order.

¹³⁰ NYDPS Reply Comments at 1-2.

¹³¹ NYDPS's comments opposing the preemption of state requirements, other than network disclosure requirements, regarding the provision of enhanced services are beyond the scope of this proceeding.

¹³² BOC Safeguards Order, 6 FCC Rcd at 7630-31.

VI. Regulatory Flexibility Act

69. In the Notice in this proceeding, we certified that the Regulatory Flexibility Act of 1980 did not apply to this proceeding because the rule amendments would not have a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The rule changes directly apply only to GTE and its affiliated companies that are considered dominant in their field of operation. Neither the Chief Counsel for Advocacy of the Small Business Administration nor any commenting party challenged our analysis. The Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq.

VII. Ordering Clauses

70. Accordingly, IT IS ORDERED, that pursuant to Sections 1, 4(i) and (j), 201-205, 218, 220 & 404 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) & (j), 201-205, 218, 220 & 404, and Section 553 of the Administrative Procedure Act, 5 U.S.C., Section 553, 5, and 218, that the policies, rules, and requirements set forth herein ARE ADOPTED.

71. IT IS FURTHER ORDERED, that GTE shall file an ONA plan nine months after release of this Order.

72. IT IS FURTHER ORDERED, that GTE shall file ONA tariffs three months after the date for filing the ONA plan. The federal tariffs shall be scheduled to become effective on three months public notice.

73. IT IS FURTHER ORDERED, that GTE shall implement ONA requirements and nondiscrimination safeguards within fifteen months from the release of this Order.¹³³

74. IT IS FURTHER ORDERED, that GTE shall provide the reports described herein.

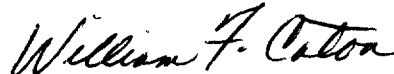
75. IT IS FURTHER ORDERED, that GTE shall comply with the CPNI password ID requirements within two years from the release of this Order.

¹³³ In a number of cases, filing dates in this Order are described as being a certain number of months after a particular event. In such cases the filing or other such date will be the same day of the month as the triggering event, but the specified number of months later. Months shall be counted beginning with the month after the one in which the triggering event occurs. Filing dates falling on a weekend or official federal government holiday will be moved to the next business day.

76. IT IS FURTHER ORDERED, that the petition to expand the scope of this proceeding filed by NATA IS DENIED.

77. IT IS FURTHER ORDERED, that the decisions in this Report and Order SHALL BE EFFECTIVE thirty days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "William F. Caton".

William F. Caton
Acting Secretary

Appendix A

COMMENTS FILED February 22, 1993

1. Association of Telemessaging Services International, Inc. (ATSI)
2. Bell Atlantic telephone companies (Bell Atlantic)
3. General Services Administration (GSA)
4. GTE
5. State of Hawaii (Hawaii)
6. Independent Telecommunications Network, Inc. (ITN)
7. Information Technology Association of America (ITAA)
8. MCI Telecommunications Corporation (MCI)
9. National Association of Broadcasters (NAB)
10. Sprint Communications Company LP (Sprint)

REPLY COMMENTS FILED March 24, 1993

1. GSA
2. GTE
3. State of Hawaii
4. MCI
5. North American Telecommunications Association (NATA)
6. New York Department of Public Service (NYDPS)